

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PATRICK R. BENNETT,)	
)	Civil Action No. 10 – 172J
Petitioner,)	
)	District Judge Kim R. Gibson
v.)	Chief Magistrate Judge Lisa Pupo Lenihan
)	
WARDEN ROBERT WERLINGER,)	
)	
Respondent.)	

MEMORANDUM ORDER

This case is before the Court on the Report and Recommendation filed by Chief Magistrate Judge Lenihan on April 1, 2013. (ECF No. 33.) Judge Lenihan recommended that Petitioner's Motion to Reopen this case (ECF No. 25) be granted and that supplemental briefing be ordered on whether this Court has jurisdiction over Petitioner's Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2241. Both Petitioner and Respondent have filed objections to the Magistrate Judge's Report and Recommendation. (ECF Nos. 34, 35.) Upon review, however, the objections do not undermine the Magistrate Judge's recommendation. As such, after *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, and the objections thereto, the following order is entered.

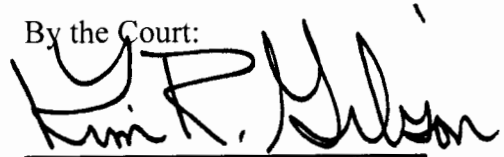
AND NOW, this 22nd day of May, 2013,

IT IS HEREBY ORDERED that the Report and Recommendation dated April 1, 2013 (ECF No. 33) is **ADOPTED** as the opinion of this Court.

IT IS FURTHER ORDERED that Petitioner's Motion to Reopen Case (ECF No. 25) is **GRANTED**.

AND IT IS FURTHER ORDERED that Petitioner shall file an Amended Petition for Writ of Habeas Corpus no later than **thirty (30) days** from the date of this order. Respondents shall then have **forty-five (45) days** to file an Answer to the Amended Petition addressing, *inter alia*, whether Petitioner has met the In re Dorsainvil, 119 F.3d 245 (3d Cir. 1997) exception and this Court has jurisdiction over the petition, whether United States v. Santos, 553 U.S. 507 (2008) and Cueller v. United States, 553 U.S. 550 (2008) are substantive changes in statutory law with retroactive application, and whether these cases have application to Petitioner's conviction so as to make it more likely than not that no reasonable juror would have convicted him.

By the Court:

A handwritten signature in black ink, appearing to read "Kim R. Gibson", written over a horizontal line.

Kim R. Gibson
United States District Judge

cc: Patrick R. Bennett
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(Via U.S. Postal Mail)

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